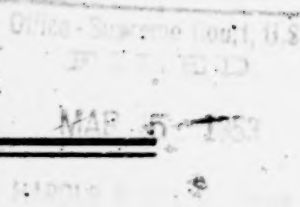


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SUPREME COURT, U.S.



IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1952

No. 568

MACKAY RADIO AND TELEGRAPH COMPANY,  
INC.,

*Petitioner,*

*v.*

RCA COMMUNICATIONS, INC.,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT.

**REPLY BRIEF FOR PETITIONER**

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New York, N. Y., March 4, 1953

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1952

MACKAY RADIO AND TELEGRAPH  
COMPANY, INC.,

*Petitioner,*

—against—

RCA COMMUNICATIONS, INC.,

*Respondent.*

No. 568

**REPLY BRIEF FOR PETITIONER**

Upon reading respondent's brief dated February 26, 1953 in opposition to the petition for certiorari herein and in No. 567, we are constrained to call this Court's attention to two salient points:

1. Respondent, while arguing the merits, nowhere shows that the questions presented are not of such novelty and importance as to warrant the interposition of this Court.

2. Respondent in urging in its Point II (brief pp. 13-9) its claims regarding the application of § 314 of the Communications Act, not only deals on the merits with matters not presented in either petition, but gives a misleading impression of the decision below. Respondent says (pp. 13-4):

"As the Court below concluded in the *Oslo* case (68 App. D. C. at 340, 97 F. 2d at 645) and the majority reiterated in this case (R. 702), the Section is devoted 'wholly' to an effort to maintain competition between radio circuits on the one hand and telegraph and cable lines on the other.' The legislative history of Section 314 is to that effect."

In point of fact, the majority below did not reach the § 314 question, and Judge Prettyman in his dissent held with the Commission on that point. The majority said (R. 702):

"In the present case the Commission found that granting Mackay's applications will 'not result in such substantial reduction of competition between cable and radio, or in the creation of a monopoly, so as to bring the AC&R system companies, and particularly Mackay, into violation of Section 314 of the Communications Act.' We need not consider whether in our opinion the record supports this conclusion."

Judge Prettyman in his dissent gave three reasons for reaching the same conclusion as did the Commission on the § 314 point (R. 706-7). In part he said at R. 707:

"3. Section 314 embodies a portion of anti-trust policy, specifically provided by the immediately preceding Section 313. The Commission was entitled to look at the whole picture in formulating its judgment as to the public interest. Thus viewed this grant of a radio circuit to Mackay certainly tends to serve the purposes of the statute. RCAC now enjoys a monopoly in radio between the places here involved. Mackay, by this grant, would introduce competition, would reduce restraint on commerce, and would destroy instead of create monopoly. The Commission

thought these broader considerations pertinent and important. I think so too."

The attempt in respondent's brief to apply to the very special § 314 question the principles of the *Timken* case 341 U. S. 596, the *Standard Oil of California* case, 337 U. S. 293, and like decisions of this Court, is not entitled to any discussion by us on an application for certiorari. These decisions are too plainly wide of the § 314 point.

The attempt to introduce the § 314 question, not passed upon by the majority below and not involved in the petitions for certiorari, should not becloud the important and novel questions presented and reasons for which the writ should be issued.

Respectfully submitted,

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